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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,244	08/22/2006	Anatoly Ivanovich Grigoriev	ZAO0101PUSA	1668
22045 7590 05/11/2009 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
LONG, ROBERT FRANKLIN				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
05/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/598,244

Applicant(s)

GRIGORIEV ET AL.

Examiner

Robert F. Long

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: Claims 2-16 remain rejected.

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764

/Robert F Long/
Examiner, Art Unit 3764

Continuation of 11, does NOT place the application in condition for allowance because: In regards to the affidavit applicant alleges that Kosciency fails to provide the ability to apply a range of forces across a continuous range. However Kosciency teaches elastic bands 28 are "adjustably secured under tension" and teaches varying the number and position of the elastic bands which would apply forces across a continuous range, (column 3, lines 41-49, column 4, lines 22-26, column 4, lines 50-55). Applicant also subjectively alleges that the adjustment features of Senegal would cause uncomfortable "bunching of the material". Although the bunching may be uncomfortable to some users it meets the adjustment limitation set forth in applicant's application. Also in regards to the dynamometric tape Kosciency teaches providing and adjusting the straps for the "desired neurological feedback" which would require some measurements and dynamometric tapes are well known measurement devices that could easily be used. Further Senegal teaches a dynamometric measuring device for measuring force, [0094, figure 11]. As claimed, the loading elements are "provided" with dynamometric tape which infers attaching a measuring dynamometric means as shown in figure 11 of Senegal or providing a dynamometric tape which would be obvious for an exercise artisan to simply provide dynamometric tape in order to perform the desired tension measurements of the bands and/or movements of the user. The act of providing refers to simply obtain the device and does not require the bands to be moved along with the bands in use. Examiner recognizes the differences in the applicants disclosed invention and the prior art of record but the invention as claimed does not overcome the prior art of record as set forth in the final rejection. Applicant has provided no support or any measured data regarding a specific measure of pressure, force, length, and/or spacing of the elastic ties. The phrases "at least 4 kg", "at least 50% initial length", "provided with a dynamometric tape", "step between hinges being not over 10%" and "n zip fasteners and n+1 standard sizes" are subjective and indefinite as to what each limitation specifically refers. Therefore, examiner treated the claims with their broadest reasonable interpretation as shown in the office action and as stated above to meet these limitations.